



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

(pages 316 *et seq.*) is addressed to the proposition that treaties do not create rules of municipal law. Although the phrase contained in the constitution of the United States, that treaties shall be deemed "the supreme law of the land," would seem to have made them so with us at least, this result attaches by virtue of the constitution and not of the treaties *per se*. Treaties contemplate solely international rights and obligations and, as the quotation from Laband shows (page 317, note 1), have for their object state action alone.

In the final section (pages 534 *et seq.*) it is maintained that restrictive constitutional clauses relating to parliamentary approval do not of themselves avoid the binding effect of treaties, unless the will of the state is expressly declared to be withheld or ratification is made a condition. In this the author's theory seems to be in line with Vattel and Grotius, and, in later times, Bluntschli and David Dudley Field (*Code of International Law*, § 192). It is opposed, however, to the doctrine of Wheaton and Calvo, and certainly to the weight of precedent in American practice (Moore, *Digest of International Law*, V, 184 *et seq.*).

The impossibility of executing a treaty once regularly passed, by reason of constitutional restrictions upon the state organs upon which its execution depends, is held insufficient to impair its binding character (page 589 *et seq.*). Though the precedent is not cited, this was precisely the attitude taken by Italy, through Marquis Rudini, at the time of the New Orleans riots; and we have recently had another instance of the live character of the doctrine in our diplomatic relations with Japan.

The work throughout maintains a high standard of scholarship, but it deals with the theory rather than the practice of treaty-making.

ARTHUR K. KUHN.

NEW YORK CITY.

International Law. A Treatise. By L. OPPENHEIM. London, Longmans, Green and Company, 1905.—2 volumes: xxxvi, 610; xxxiv, 595 pp.

Dr. Oppenheim is a teacher of international law. He was formerly connected with the University of Basle and is at present in the University of London. His purpose in writing has been to prepare "an elementary book" for the use of students. In two volumes he has undertaken to give "a complete survey of the subject." In organization and in other respects the work is similar to that of Bonfils: the

chapters are subdivided into topics which vary in length from two to six pages ; at the head of each topic is given a list of references to the leading writers of the different countries on international law. The work is written throughout in a very didactic style and "is intended," as the author states in his preface, "to present international law as it is, and not as it ought to be." In connection with questions on which the Institute of International Law has proposed rules, the rules are usually set forth. Perhaps the most commendable features of the work are the copious references to treaty stipulations and the fair and impartial judgment with which Dr. Oppenheim, at all times, estimates the conduct of the various states. "I have tried to write," he says, "in a truly international spirit, neither taking any one nation's part nor denouncing any other." In this important particular he has succeeded.

Dr. Oppenheim has little sympathy with the natural-law school of writers. He states that "positivism has gained slowly and gradually the upper hand, until at the end it may be said to be victorious." One would, therefore, expect to find his work a storehouse of precedents, but this is far from true. He refers to few actual cases. In the first volume he lists fifty-four cases and discusses some of them ; in the second volume his list is longer, but most of these cases are merely cited in foot-notes, without analysis, to substantiate some very general propositions advanced in the text. Occasionally, when Dr. Oppenheim does undertake to give the facts of a case, he states them incorrectly ; in the Koszta case, for example, he omits to mention that Koszta had been banished by Austria, that he had taken the first steps to naturalization under the laws of the United States by formally declaring his intention to become a citizen, that he had received a *tezkerah* from the proper United States officers in Turkey and was thereby entitled to the protection of the United States while within the dominions of Turkey, and, finally, that the right of the United States to protect him under the special circumstances in which he found himself was based on his possession of the *tezkerah* and not, as Dr. Oppenheim states, "because he had taken his domicile on her territory with the intention to become there naturalized in due time." The case of Soulé is noted by Dr. Oppenheim as follows : "In 1854, the French government did not allow the United States envoy, Soulié [*sic*], who had landed at Calais on his way to Madrid, to stop in France, because he was a French refugee naturalized in the United States." Mr. Soulé was stopped at Calais, according to the explanation made by the French minister of foreign affairs, not because the French government wished

to prevent his "simple passage" through France to his post, but because "the sojourn of a foreigner whose antecedents had awakened the attention of the authorities" made it "necessary to consult him as to his intentions"; and this was prevented by Mr. Soulé himself, who, as soon as he was stopped, left Calais and returned to his post by way of England and Portugal.

Dr. Oppenheim obviously regards himself as a positivist, and has doubtless attempted to set forth the actual practice of states; but his method is very different from that of Hall and Westlake, who carefully collect and analyze the best evidence of the actual practice and permit their readers to observe the logical processes through which they reach their statements of the existing law. Dr. Oppenheim operates largely with principles of policy, which are necessarily somewhat indefinite, and, by means of distinctions which are certainly subjective and which often seem *doctrinaire*, he deduces jural concepts which are distinctly his own and which he sets forth in novel terms. Thus, in a chapter entitled "Responsibility of States" (I, 198 *et seq.*), Dr. Oppenheim asserts that there are two different kinds of responsibility: "original," or that which is "borne by a state for its own—that is, its government's—actions, and for such actions of the lower organs or of private individuals as are performed at the government's command or with its authorization"; and "vicarious," or that which is borne by states "for certain acts other than their own—namely, certain unauthorized injurious acts of their organs, of their subjects, and even of such foreigners as are for the time living within their territory." A neglect by a state, he says, of its "original" responsibility constitutes an "international delinquency" and "requires, apart from their especial consequences, a formal expiatory act, such as an apology at least, by the delinquent state to repair the wrong done."

On the other hand, the vicarious responsibility which a state bears requires chiefly compulsion to make those officials or other individuals who have committed internationally injurious acts repair as far as possible the wrongs done, and punishment, if necessary, of the wrong-doers. In case a state complies with these requirements, no blame falls upon it on account of such injurious acts. But, of course, in case the state refuses to comply with these requirements, it commits thereby an international delinquency, and its hitherto vicarious responsibility turns *ipso facto* into original responsibility.

Dr. Oppenheim then discusses in general terms for several pages the application of his novel distinction. He states that the action of a legislative body, however illegal it may be from the international point

of view and however injurious it may be to a foreign state, "can never constitute an international delinquency," but that "all states must bear vicarious responsibility for such attitudes of their parliaments." He takes the position that "individuals who enter foreign territories submit themselves to the law of the land, and their home state has no right to request that they should be otherwise treated than as the law of the land authorizes a state to treat its own subjects." And he goes on to say that, "since the law of nations does not prevent a state from expelling foreigners, the home state of an expelled foreigner cannot request the expelling state to pay damages for losses sustained by the expelled through his having to leave the country." He says "that individuals who enter foreign territory must take the risk of an outbreak of an insurrection or riot just as the risk of the outbreak of other calamities." And, unless the municipal law of a state provides a remedy for injuries caused by insurrection or riot, "the state itself never has by international law a duty to pay such damages." Throughout this discussion Dr. Oppenheim refers us to no precedents, although a collection of cases, holding contrary to the opinions expressed by him, is to be found in Moore's *International Arbitrations*, a work which Dr. Oppenheim does not cite and apparently has never consulted.

Dr. Oppenheim's failure to search out the precedents has caused him at times to misstate the existing practice of nations. So, in speaking (I, 443) of the claim of asylum for persons who have sought refuge in diplomatic domiciles, he states that "during the nineteenth century all remains of it vanished." Again, in discussing the basic principles of neutral duty, he emphasizes impartiality, the doctrine of Grotius and Bynkershoek, rather than abstention, the only doctrine deducible from modern precedents. A few more errors and omissions may be briefly noted. The author states (I, 425) that "a distinction is made between a chargé d'affaires and a chargé des affaires"; that "the latter is a member of a legation whom the head of the legation delegates for the purpose of taking his place during his absence on leave"; and that "such a chargé des affaires ranks below the chargé d'affaires." He evidently means to distinguish between chargé d'affaires *ad hoc* and the chargé d'affaires *per interim*. The greater Republic of Central America is spoken of (I, 129, 156) as if still in existence; it was dissolved in 1898. A slight error of Hall is perpetuated in the statement (I, 424) that the classification of diplomatic representatives fixed at Vienna and Aix-la-Chapelle has been accepted by "all" states. It should be noted that Turkey has a system of its own, which differs from that of the other states in classing together ministers resident and

ministers plenipotentiary. In treating of the practice governing the recognition of new states, Dr. Oppenheim does not undertake to mention or discuss the recognition of Panama. Notwithstanding the failure of Great Britain on the absorption of the Transvaal and that of Cuba on its secession from Spain to assume the financial obligations attached to their respective previous persons, Dr. Oppenheim says there is no doubt about the existence of "a real rule of international law, based on custom," which requires the absorbing state and the new state to take over such debts. He omits to mention the case of Cuba.

G. W. SCOTT.

WASHINGTON, D. C.

Chile : Its History and Development, Natural Features, Products, Commerce, and Present Conditions. By G. F. SCOTT ELLIOT. New York, Charles Scribner's Sons, 1907.—xxviii, 357 pp.

The Andes and the Amazon : Life and Travel in Peru. By C. REGINALD ENOCK. New York, Charles Scribner's Sons, 1907.—xvi, 379 pp.

Within recent years the increasing attention drawn to the countries of South America has created a demand for fuller and more exact information. So far as this attention carries with it a corresponding degree of interest, the sort of literature required is that which deals with actual conditions. The general reader cares as little for the history of the South American states as for the superficial impressions of travelers bent merely on the quest of the picturesque. He wishes to know something about the geographical, economic, political and social situation and prospects in general, and he also wishes information regarding all the varied elements of social life which go to make up civilization. Such information is especially desirable for two reasons : first, because it would serve to dispel the common notion that the South American republics are scarcely more than half civilized ; and secondly, because at present it is either not obtainable at all or to be obtained only in the shape of meagre and often erroneous statistics.

Neither of the works under review supplies this sort of information. Though superior to any other books, in English at least, which attempt to deal with Chile and Peru, they do not give a clear or well-rounded picture of the conditions prevailing in these countries. As the initial volumes in a " South American Series," it might reasonably be expected that they would strive to satisfy the present demand, and also that they would show a certain similarity in treatment. Unfortunately,